

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 PAUL HUPP,) Civil No. 12cv0492 GPC(RBB)
12)
13 Plaintiff,) **ORDER**
14) (1) DENYING MOTION TO COMPEL
15 v.) DISCOVERY FROM SAN DIEGO
16) COUNTY, JAMES PATRICK ROMO,
17 SAN DIEGO COUNTY, SAN DIEGO) AND PETER MYERS [ECF NO. 154];
18 POLICE DEPARTMENT, et al.,) AND
19 Defendants.) (2) DENYING AS MOOT MOTION FOR
20) PROTECTIVE ORDER ON BEHALF OF
21 Plaintiff Paul Hupp's Motion to Compel Discovery on San Diego
22 County, James Patrick Romo and Peter Myers [ECF No. 154] ("Motion
23 to Compel") was filed nunc pro tunc to September 5, 2013.
24 Defendants filed their response in opposition [ECF No. 172], and
25 Hupp filed a reply [ECF No. 185].
26 On September 27, 2013, Defendants San Diego County, James Romo
27 and Peter Myers filed a Motion for Protective order [ECF No. 160].
28 Plaintiff opposes the motion [ECF No. 169]. Defendants filed a
reply in support of the motion [ECF No. 177].

1 The hearing on the motions was set for October 28, 2013. The
2 Court determined the matters to be suitable for resolution without
3 oral argument, submitted the motions on the parties' papers
4 pursuant to the Local Civil Rule 7.1(d), and vacated the motion
5 hearing [ECF No. 181]. For the following reasons, Plaintiff's
6 Motion to Compel is DENIED, and Defendants' Motion for Protective
7 Order is DENIED as moot.

I. FACTUAL BACKGROUND

9 Plaintiff Paul Hupp, proceeding pro se, commenced this action
10 on February 28, 2012, pursuant to 42 U.S.C. § 1983. (Compl. 1, ECF
11 No. 1.) Plaintiff's Third Amended Complaint was filed on August
12 28, 2012 [ECF No. 64], naming as Defendants San Diego County,¹ City
13 of San Diego, City of Beaumont,² James Patrick Romo,³ Raymond
14 Wetzel, William Kiernan,⁴ Peter Myers,⁵ and Joseph Cargel. (Third
15 Am. Compl. 1, ECF No. 64.) Hupp's action arises from his contempt
16 of court charges and conviction in San Diego Superior Court in
17 2011. (See *id.* at 4-5, 7-8.)

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21 ¹ Plaintiff's causes of action against the County are based on
22 the allegations against the San Diego District Attorney's Office,
San Diego County Office of Assigned Counsel, and the San Diego
Sheriff's Department. (Third Am. Compl. 2, ECF No. 64.)

² Defendant City of Beaumont was dismissed from this case on December 10, 2012 [ECF No. 105].

³ Defendant Romo was dismissed from the case on January 9, 2014 [ECF No. 221].

⁴ Defendant Kiernan was dismissed from the case on December 16, 2013 [ECF No. 210].

28 ⁵ Defendant Myers was dismissed from the case on January 30, 2014 [ECF No. 228].

1 Plaintiff alleges that in November 2010, Jeffrey Freedman⁶
 2 obtained a three-year restraining order against Hupp in San Diego
 3 Superior Court. (Id. at 4.) In July 2011, Freedman brought
 4 contempt charges against Hupp for sending letters to Freedman in
 5 violation of the restraining order. (Id. at 5.) Defendant William
 6 Kiernan, an attorney from the San Diego County Office of the
 7 Assigned Counsel, was appointed to represent Hupp. (Id.) Hupp
 8 alleges that Kiernan failed to investigate the case, request
 9 discovery, and communicate with Hupp; and Kiernan's lack of
 10 preparation amounted to ineffective assistance of counsel. (Id. at
 11 6-7.) Plaintiff also claims that Defendants performed DNA and
 12 fingerprint tests on the letters and envelopes allegedly sent by
 13 him, but Defendants wrongfully withheld this exculpatory forensic
 14 evidence until February 2012, when they produced the evidence in
 15 another court case. (Id. at 11-12.)

16 Plaintiff claims that he was wrongfully convicted based on
 17 insufficient evidence and sentenced to twenty-five days in custody,
 18 and a \$5,000 fine was imposed. (Id. at 7.) Hupp alleges that the
 19 trial judge improperly denied him custody credits under California
 20 Penal Code section 4019. (Id. at 8.)

21 On January 3, 2012, Hupp reported to the San Diego Sheriff's
 22 Department to serve his twenty-five day sentence. (Id. at 9.)
 23 Plaintiff claims that he told the Sheriff's Department personnel
 24 that they had to apply Penal Code section 4019 credits to
 25 his sentence, but they refused to do so. (Id.) Hupp also alleges
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⁶ All claims against Defendant Freedman in this case have been dismissed [ECF No. 35].

1 he was denied access to the law library and was prevented from
2 filing legal papers. (Id. at 10-11.)

3 Plaintiff contends that Defendants never informed him that the
4 San Diego District Attorney's office, San Diego Police Department,
5 Deputy District Attorney Romo, and Detective Wetzel were
6 investigating and assisting Deputy Attorney General Drcar in
7 prosecuting the November 2011 civil contempt proceedings against
8 Hupp. (Id. at 7, 11.) Hupp also asserts that Defendants failed to
9 disclose exculpatory DNA and fingerprint evidence obtained from the
10 letters Freedman received, in violation of Plaintiff's due process
11 rights under Brady v. Maryland, 373 U.S. 83 (1963). (Id. at 11-
12 12.)

13 On the basis of these allegations, Plaintiff brought claims
14 for violation of civil rights; conspiracy to withhold Brady
15 evidence; interference with legal mail and free speech; unlawful
16 detention; intentional infliction of emotional distress; as well as
17 gross negligence in the hiring, training, supervision, and
18 retention of prosecutors and peace officers. (See id. at 12-29.)
19 Hupp also alleged that Defendants' actions caused him emotional and
20 psychological injuries, embarrassment, humiliation, shame, fright,
21 fear, and grief. (Id. at 14, 20-21.) For his injuries, Plaintiff
22 seeks compensatory and punitive damages exceeding \$75,000, as well
23 as declaratory and injunctive relief. (Id. at 35-37.)

24 After the rulings on Defendants' substantive motions, the
25 following claims remain in the case: (1) the withholding of
26 "Brady" evidence, asserted against Defendants San Diego Police
27 Department and Wetzel (claim one); (2) conspiracy to withhold
28 "Brady" evidence, brought against Defendants San Diego Police

1 Department and Wetzel (claim two); (3) declaratory and injunctive
 2 relief against San Diego Sheriff's Department for the denial of
 3 section 4019 credits (claim eleven); and (4) interference with
 4 Plaintiff's free speech, right to petition the government, and
 5 legal proceedings due to the wrongful search and seizure by San
 6 Diego District Attorney's Office and Cargel (claim twelve⁷).

7 **II. LEGAL STANDARDS**

8 **A. Motion to Compel Discovery**

9 "Parties may obtain discovery regarding any nonprivileged
 10 matter that is relevant to any party's claim or defense
 11 Relevant information need not be admissible at the trial if the
 12 discovery appears reasonably calculated to lead to the discovery of
 13 admissible evidence." Fed. R. Civ. P. 26(b)(1). Rule 37 of the
 14 Federal Rules of Civil Procedure enables the propounding party to
 15 bring a motion to compel responses to discovery. Fed. R. Civ. P.
 16 37(a)(3)(B). The party resisting discovery bears the burden of
 17 opposing disclosure. Miller v. Pancucci, 141 F.R.D. 292, 299 (C.D.
 18 Cal. 1992).

19 As the moving party, Hupp must identify (1) the discovery
 20 requests that are the subject of his motion to compel, (2) which of
 21 the defendants' responses are disputed, (3) why the responses are
 22 deficient, (4) the reasons defendants' objections are without
 23 merit, and (5) the relevance of the requested information to the
 24 prosecution of this action. See, e.g., Brooks v. Alameida, No. CIV
 25 S-03-2343 JAM EFB P, 2009 WL 331358, at *2 (E.D. Cal. Feb. 10,
 26

27 ⁷ On September 17, 2013, the Court stayed § 1983 claims
 28 related to the search and seizure of Plaintiff's property alleged
 in claim twelve of the Third Amended Complaint pending resolution
 of the state criminal proceedings against Hupp [ECF No. 156].

1 2009) ("Without knowing which responses plaintiff seeks to compel
 2 or on what grounds, the court cannot grant plaintiff's motion.");
 3 Ellis v. Cambra, No. CIV 02-05646-AWI-SMS PC, 2008 WL 860523, at *4
 4 (E.D. Cal. Mar. 27, 2008) ("Plaintiff must inform the court which
 5 discovery requests are the subject of his motion to compel, and,
 6 for each disputed response, inform the court why the information
 7 sought is relevant and why Defendant's objections are not
 8 justified.").

9 **B. Pro Se Litigants**

10 "In general, pro se representation does not excuse a party
 11 from complying with a court's orders and with the Federal Rules of
 12 Civil Procedure." Ackra Direct Mktg. Corp. v. Fingerhut Corp., 86
 13 F.3d 852, 856-57 (8th Cir. 1996) (citing Jones v. Phipps, 39 F.3d
 14 158, 163 (7th Cir. 1994); Anderson v. Home Ins. Co., 724 F.2d 82,
 15 84 (8th Cir. 1983)). Above all, plaintiffs who choose to represent
 16 themselves are expected to follow the rules of the court in which
 17 they litigate. Carter v. Comm'r, 784 F.2d 1006, 1008-09 (9th Cir.
 18 1986); see also Bias v. Moynihan, 508 F.3d 1212, 1223 (9th Cir.
 19 2007) (discussing the pro se litigant's untimely filing in
 20 violation of local rules). "[W]hile pro se litigants may be
 21 entitled to some latitude when dealing with sophisticated legal
 22 issues, acknowledging their lack of formal training, there is no
 23 cause for extending this margin to straightforward procedural
 24 requirements that a layperson can comprehend as easily as a
 25 lawyer." Jourdan v. Jabe, 951 F.2d 108, 109 (6th Cir. 1991).

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III. DISCUSSION

A. Motion to Compel Discovery From Romo and Myers

3 Plaintiff moved to compel discovery from Defendants County of
4 San Diego, James Patrick Romo, and Peter Myers. (Pl.'s Mot. Compel
5 Mem. P. & A. 3, ECF No. 154.) Because all claims against Romo and
6 Myers have been dismissed, [ECF Nos. 221, 228], Plaintiff may not
7 seek discovery under Rules 33 and 34 of the Federal Rules of Civil
8 Procedure from Defendants dismissed from the case. See Stearns v.
9 Flores, No. CV F 00 6331 AWILJOP, 2006 WL 1980334, at *1 (E.D. Cal.
10 2006) (denying motion to compel discovery from dismissed defendants
11 in a § 1983 case). Accordingly, the Court denies Plaintiff's
12 Motion to Compel Discovery from Defendants Romo and Myers.

B. Motion to Compel Discovery From San Diego County

14 Plaintiff has served six requests for production on Defendant
15 San Diego County. (Pl.'s Mot. Compel Mem. P. & A. Ex. 1e, at 43-
16 48, ECF No. 154.)

1. Document request 1

18 Hupp's first request for production from San Diego County
19 seeks the following items:

20 Any and all documents which are in your possession
concerning the investigation of plaintiff, and more fully
21 set forth in the Complaint, including Plaintiff's civil
contempt case; Superior Court Case Number 37-2010-
22 00102264-CU-HR-CTL, and Plaintiff's criminal case,
Superior Court Case Number SCD238651.

This shall include at a minimum, but is not limited to:

25 a. Any and all reports or forms describing any and all
aspects of the investigation;

26 b. Any and all investigation reports, including
fingerprint and DNA evidence;

27 c. Any and all audio, video and digital recordings;

- 1 d. Any and all statements of ROMO, Jeffrey
- 2 Anderson Dort and San Diego County Deputy
- 3 District Attorney investigator Dan Schmidt
- 4 concerning or mentioning plaintiff, including
- 5 any and all e-mail without regard to whether
- 6 said e-mail account/s are work or personal;
- 7 e. Any and all inter-office memos, intra-office
- 8 memos, reports, letters, correspondence,
- 9 computerized records or writings that mention,
- 10 concern discuss or pertain to Plaintiff; and
- 11 f. Statements and/or interviews of any
- 12 witnesses, informants, the plaintiff, Deputy
- 13 District Attorneys, lawyers, police agents and
- 14 any Peace Officers, or other persons who had
- 15 any role or contact with ROMO, Jeffrey Anderson
- 16 Dort and San Diego County Deputy District
- 17 Attorney investigator Dan Schmidt concerning
- 18 the investigation of plaintiff, including any
- 19 Deputy District Attorney supervisor/s.

20 (Id. at 46.) Defendant San Diego County objected to the request as
 21 vague, compound, overbroad, unduly burdensome, not relevant to any
 22 claim in the action, and not reasonably calculated to lead to
 23 discovery of admissible evidence. (Id. Ex. 4, at 93.) Defendant
 24 also responded that the District Attorney's discovery had already
 25 been produced during Hupp's criminal case. (Id.)

26 In his Motion to Compel, Hupp argues that the County may not
 27 avoid responding to this request simply because the relevant
 28 documents had already been produced during the course of Hupp's
 29 criminal case. (Pl.'s Mot. Compel Mem. P. & A. 12, ECF No. 154.)
 30 Plaintiff also explains that his request is "much broader than what
 31 was produced in the discovery of the criminal trial." (Id.)
 32 Defendant opposes the motion and argues that Hupp failed to satisfy
 33 the meet-and-confer obligation; furthermore, his request is
 34 unrelated to the remaining allegations in the case and seeks
 35 "future fodder for Plaintiff's personal vendetta against
 36 Defendants." (Defs.' Opp'n 3-7, ECF No. 172.) Defendant San Diego

1 County does not specifically address request number one, but it
 2 generally argues that the ruling on Defendants' substantive motions
 3 "may render certain discovery requests irrelevant to the
 4 litigation." (*Id.* at 4.)

5 Plaintiff's request to Defendant San Diego County seeks
 6 documents related to both his civil contempt case, Superior Court
 7 Case Number 37-2010-00102264-CU-HR-CTL, and his criminal case,
 8 Superior Court Case Number SCD238651. Hupp's civil contempt case
 9 was prosecuted by the Office of the Attorney General of California.
 10 The Court previously dismissed all claims against Deputy Attorney
 11 General Drcar, the prosecutor in Plaintiff's contempt proceeding,
 12 finding that Drcar was entitled to absolute immunity from liability
 13 under § 1983 [ECF No. 35]. The Court later found that Deputy
 14 District Attorney Romo, who prosecuted Hupp's criminal case, was
 15 not involved in the civil contempt proceedings [ECF No. 221]. Hupp
 16 has not shown that the Defendant County has the requisite control
 17 over the documents related to his civil contempt case. See United
 18 States v. Int'l Union of Petroleum & Indus. Workers, AFL-CIO, 870
 19 F.2d 1450, 1452 (9th Cir. 1989) ("The party seeking production of
 20 the documents . . . bears the burden of proving that the opposing
 21 party has such control.") (citing Norman v. Young, 422 F.2d 470,
 22 472-73 (10th Cir. 1970)).

23 Additionally, Plaintiff has not met his burden of showing that
 24 Defendant's objections to his request for documents related to
 25 Hupp's criminal prosecution are improper. As described earlier,
 26 the only active remaining claims in the case are withholding and
 27 conspiracy to withhold "Brady" evidence against Defendants San
 28 Diego Police Department and Wetzel (claims one and two), and for

1 declaratory and injunctive relief against San Diego Sheriff's
 2 Department for the denial of California Penal Code section 4019
 3 credits (claim eleven). Plaintiff's remaining claim for
 4 interference with free speech, his right to petition government and
 5 Hupp's legal proceedings due to wrongful search and seizure (claim
 6 twelve) was stayed because Hupp's criminal case is ongoing [ECF No.
 7 156]. Thus, at this time, Plaintiff may not propound discovery on
 8 this claim.⁸ See City of Fresno v. United States, No.
 9 CV-F-06-1559 OWW/TAG, 2007 WL 1100501, at *9 (E.D. Cal. Apr. 11,
 10 2007) ("Staying the three causes of action will cause confusion and
 11 conflict because the City and Boeing will continue to propound
 12 discovery to the United States which they may believe relevant to
 13 the unstayed claims but the United States may argue is relevant to
 14 the stayed claims."). Defendant San Diego County would not be
 15 excused from responding to this request absent the stay of claim
 16 twelve. Furthermore, the Court notes that in this case Hupp has
 17 already received from Defendant City of San Diego documents related
 18 to his criminal case investigation, including five reports, 911 and
 19 communications tapes, and lab files. (See Order Granting in Part &
 20 Den. in Part Mot. Compel Disc. From City San Diego & Raymond Wetzel
 21 8, ECF No. 251.)

22 In sum, Hupp has not demonstrated that the County's objections
 23 to his first request should be overruled. See Ellis, 2008 WL

24
 25 ⁸ No party has moved to lift the stay. Although Hupp contends
 26 that "Plaintiff's civil contempt and criminal cases are over[,]"
 27 (Pl.'s Mot. Compel Mem. P. & A. 6, ECF No. 154), at the mandatory
 28 settlement conference on May 6, 2014, which Hupp failed to attend,
 Defendants informed the Court that his criminal case is currently
 on appeal. A search of the California Court of Appeal's docket
 reveals that the case is still pending:
http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=41&doc_id=2048351&doc_no=D064053

1 860523, at *4 (noting that "[i]f Defendant objects to one of
 2 Plaintiff's discovery requests, it is Plaintiff's burden on his
 3 motion to compel to demonstrate why the objection is not
 4 justified."). Accordingly, Plaintiff's motion as to request for
 5 production number one to County is DENIED.

6 2. Document request 2

7 In his second request, Hupp seeks "[a]ny and all documents
 8 that comprise of, or are part of, ROMO's personnel file, including
 9 the disciplinary record and any other documents concerning ROMO's
 10 hiring, training, duties, performance, assignments and mental and
 11 physical condition." (Pl.'s Mot. Compel Mem. P. & A. Ex. 1e, at
 12 46, ECF No. 154.) The Defendant County objected to the request on
 13 the ground that it is vague, ambiguous, compound, overbroad and
 14 unduly burdensome, not relevant to any claim in the action, and not
 15 reasonably calculated to lead to admissible evidence. (Id. Ex. 4,
 16 at 93.) Defendant's objection further stated:

17 This request seeks privileged information pertaining to
 18 personnel and internal affairs matters and seeks
 19 disclosure of official information acquired in confidence
 20 per Evidence Code § 1040. Disclosure of personnel,
 21 medical and similar files in an unwarranted invasion of
 22 personal privacy impermissible under the Freedom of
 23 Information Act and the State and Federal Constitutions.
 24 The information sought is further protected from the
 25 disclosure under the provisions of the Federal Privacy
 26 Act, as it: 1) seeks records and information compiled for
 27 law enforcement purposes, which is categorically exempt
 28 from disclosure because its production risks an
 unwarranted invasion of privacy, 2) seeks non-
 discoverable and inadmissible information pertaining to
 disciplinary recommendations, and 3) seeks information
 reflecting advisory opinions, consultations,
 recommendations and deliberations protected from
 disclosure by the deliberative process privilege.

27 (Id. at 93-94.) Plaintiff argues that the San Diego County's
 28 response consists of boilerplate objections and that the

1 information he is seeking is relevant.⁹ (Id. at 7.) Hupp also
 2 argues that Defendants were required to seek a protective order to
 3 avoid disclosure. (Id.)

4 Federal Rule of Civil Procedure 26(c)(1) provides that "[a]
 5 party or any person from whom discovery is sought may move for a
 6 protective order in the court where the action is pending"
 7 Fed. R. Civ. P. 26(c)(1) (emphasis added). There is no requirement
 8 that a party seek a protective order when withholding potentially
 9 discoverable information. See IPALCO Enterps., Inc. v. PSI Res.,
 10 Inc., 148 F.R.D. 604, 606 n.3 (S.D. Ind. 1993) ("The Court agrees
 11 with defendants that they are not required to move for a protective
 12 order under Rule 26(c) every time they object to discovery based on
 13 Rule 26(c) grounds.") Additionally, Defendant San Diego County did
 14 move for a protective order in this case [ECF No. 160].
 15 Accordingly, Plaintiff's argument is without merit.

16 Furthermore, after Defendant Romo's dismissal from the case,
 17 any information Plaintiff expects to acquire from Romo's personnel
 18 file does not appear to be germane to the remaining claims. Under
 19 Rule 26(b)(1) of the Federal Rules of Civil Procedure, absent good
 20 cause, discovery must relate more directly to a "claim or defense"
 21 than it did prior to amendments to the rule in 2000. Elviq v.
 22 Calvin Presbyterian Church, 375 F.3d 951, 968 (9th Cir. 2004). The
 23 information Hupp seeks relates to claims against Romo that have
 24 been dismissed. To the extent he seeks discovery in connection

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 26 ⁹ Plaintiff's document request two to Defendant San Diego
 27 County was identical to document request two to Defendant Romo.
 28 (Compare Pl.'s Mot. Compel Mem. P. & A. Ex. 1c, with id. Ex. 1e.)
 In his Motion to Compel, Hupp claims that the County's "objections
 are the same as the ROMO objections, and Plaintiff incorporates his
 reply to ROMO's objections here." (Pl.'s Mot. Compel Mem. P. & A.
 12, ECF No. 154.)

1 with claim twelve, Plaintiff may not do so until his criminal case
2 is over and the stay is lifted. For these reasons, the Motion to
3 Compel production of documents and things identified in request
4 number two is DENIED.

5 3. Document request 3

6 Hupp's third request seeks the following:

7 Any and all documents concerning, or at all relevant, to
8 any formal or informal complaint made against you or
9 about ROMO, Jeffrey Anderson Dort and San Diego County
10 Deputy District Attorney investigator Dan Schmidt from
11 any source whatsoever, and concerning any subject matter
12 whatsoever, without regard to the outcome.

13 This shall include at a minimum, but is not limited
14 to:

- 15 a. Documents concerning all complaints and
16 other disciplinary or police review of you by
17 Internal Affairs or San Diego County;
- 18 b. The full and complete documents concerning
19 each action listed on ROMO, Jeffrey Anderson
20 Dort and San Diego County Deputy District
21 Attorney investigator Dan Schmidt's
22 disciplinary record;
- 23 c. The full and complete documents concerning
24 all complaints and other disciplinary or police
25 review of ROMO, Jeffrey Anderson Dort and San
26 Diego County Deputy District Attorney
27 investigator Dan Schmidt's activities
28 maintained by San Diego County; and
- 29 d. All information contained in the computers
30 maintained by Internal Affairs or any other
31 division of the District Attorney or San Diego
32 County, concerning ROMO, Jeffrey Anderson Dort
33 and San Diego County Deputy District Attorney
34 investigator Dan Schmidt including but not
35 limited to, information retrievable by computer
36 codes.

37 (Pl.'s Mot. Compel Mem. P. & A. Ex. 1e, at 47, ECF No. 154.)

38 Defendant County objected to this request as vague, ambiguous,
39 compound, overbroad and unduly burdensome, and seeking documents
40 not relevant to the action. (Id. Ex. 4, at 94.) It also objected

1 on privacy grounds and invoked the official information privilege.
 2 (Id. at 94-95.)

3 Hupp argues that the County's objections are "boilerplate
 4 denials." (Pl.'s Mot. Compel Mem. P. & A. 7-8, ECF No. 154.)
 5 Plaintiff offers no further argument on how the information he
 6 requests is relevant to any remaining claim or defense. As an
 7 initial matter, this request is duplicative as it relates to Romo's
 8 disciplinary record. Because Romo is no longer a Defendant,
 9 Plaintiff must establish that the information regarding Romo's
 10 performance or discipline remains salient to Hupp's prosecution of
 11 his surviving claims. Similarly, neither Jeffrey Dort nor Dan
 12 Schmidt are parties to this case.¹⁰ At this time, Plaintiff has not
 13 shown the relevance of any records involving these individuals. As
 14 to request number three, the motion is DENIED.

15 4. Document request 4

16 Plaintiff's fourth request asks Defendant County to produce
 17 the following:

18 All Deputy District Attorney materials which are in your
 19 possession and relevant to this incident, including, but
 20 not limited to, guidelines, directives, policy
 21 statements, procedures, training materials of any kind,
 22 in any form or medium, concerning District Attorney
 23 policy, custom or practice regarding:

24 a. Discipline of Deputy District Attorneys
 25 generally;

26 b. Specific discipline for the violation of
 27 constitutional rights, including, but not limited to
 28 withholding exculpatory evidence, fingerprint
 29 evidence, DNA evidence, police reports,
 30 investigative reports; and violations of due
 31 process;

28 ¹⁰ Plaintiff previously attempted to add Dan Schmidt as a
 29 Defendant, but his request was denied [ECF No. 148].

c. The procedure relating to or regarding acts which violate due process and denies [sic] access to exculpatory evidence, fingerprint evidence, DNA evidence, police reports, investigative reports, by Deputy District Attorneys and investigators, and violations of due process rights during and resulting from the withholding of exculpatory, fingerprint, DNA evidence, police reports, investigative reports.

(Id. Ex. 1e, at 47-48.) The County raises the same objections: The request is vague, overbroad, and seeks documents not reasonably calculated to lead to the discovery of admissible evidence or relevant to the claims in this case. (Id. Ex. 4, at 95.) Hupp moves to compel, incorporating his earlier conclusory arguments that the County responded with boilerplate objections and that the information he seeks is relevant. (Pl.'s Mot. Compel Mem. P. & A. 7-8, ECF No. 154.)

Hupp's request is overbroad and not relevant to any remaining claim in this case. Judge Curiel granted summary judgment in favor of Defendants Romo and the San Diego District Attorney's Office on Plaintiff's claims related to withholding "Brady" evidence; the intentional infliction of emotional distress; and the negligent hiring, training, supervision, and retention of deputy district attorneys. (Order Granting Defs. Cnty. San Diego & James Romo's Mot. Summ. J. 11-12, ECF No. 221.) The Court explained:

Plaintiff's claims for intentional infliction of emotional distress against both Defendants as well as for negligent hiring, training, supervision, and retention of deputy district attorneys against the SD DA as a Defendant County agency are based on Plaintiff's allegations that Defendant Romo withheld and concealed exculpatory evidence during Plaintiff's civil contempt proceedings. (See Compl. ¶¶ 97, 101, 109, 115.) Defendants' evidence, provided in the form of declarations by Defendant Romo and Attorney General Dr. Car, directly contradicts Plaintiff's allegations. (See Dkt. No. 123-3 ¶ 4; Dkt. No. 123-4 ¶ 5.) According to

1 both declarations, Defendant Romo did not conduct or
 2 assist with the California Attorney General's civil
 3 harassment and contempt of court allegations against
 4 Plaintiff in any capacity. (Dkt. No. 123-3 ¶ 4; Dkt. No.
 5 123-4 ¶ 5.) Because Plaintiff fails to offer evidence
 6 beyond the pleadings to show that there is a genuine
 7 issue for trial, the Court GRANTS Defendants County and
 8 James Romo judgment as a matter of law as to Plaintiff's
 9 derivative claims for emotional distress and County
 10 Monell liability.

11 (Id.) Thus, because Hupp's claims against the County based on
 12 supervisory liability under Monell v. Dep't of Soc. Servs., 436
 13 U.S. 658, 694-95 (1978), have been dismissed from the case,
 14 Plaintiff is not entitled to discovery relating to the negligent
 15 hiring, training, supervision or retention of deputy district
 16 attorneys. See Manriquez v. Huchins, Case No. 1:09-cv-00456-LJO-
 17 BAM PC, 2012 U.S. Dist. LEXIS 100484, at *7 (E.D. Cal. July 19,
 18 2012) ("Plaintiff's motion for sanctions is based upon discovery
 19 requests for claims that are no longer in issue in this action and
 20 shall be denied."). The Motion to Compel discovery for request
 21 number four is DENIED.

22 5. Document request 5

23 Plaintiff's fifth request asks the County for documents that
 24 refer to third parties.

25 Your responses shall include any and all writings and
 26 documents, either directly or indirectly, between Freedom
 27 Communications Inc. or their representatives, Michael
 28 Bishop or his representatives, Richard and Judith Beyl or
 29 their representatives, any federal court or their
 30 representatives, any federal law enforcement agency or
 31 their representatives, any state law enforcement agency
 32 or their representatives and any local law enforcement
 33 agency or their representatives.

34 (Pl.'s Mot. Compel Mem. P. & A. Ex. 1e, at 48, ECF No. 154.) The
 35 County objected that "[t]his is not a valid request." (Id. Ex. 4,
 36 at 96.) Plaintiff moves to compel, arguing that the County failed

1 to respond to his "valid requests." (Pl.'s Mot. Compel Mem. P. &
 2 A. 12, ECF No. 154.)

3 Neither party substantively addresses the County's objection.
 4 Plaintiff's fifth request is unrelated to this lawsuit. Neither
 5 Freedom Communications, Michael Bishop, Richard Beyl, nor Judith
 6 Beyl are defendants or witnesses in Hupp's litigation against the
 7 City of San Diego and Defendant Wetzel. (See Third Am. Compl. 2-4,
 8 ECF No. 64.) Freedom Communication and these individuals were
 9 defendants in two of Plaintiff's other lawsuits: See Hupp v.
 10 Freedom Commc'ns, Inc., 221 Cal. App. 4th 398, 163 Cal. Rptr. 3d
 11 919 (2013); Hupp v. Cnty. of San Diego, No. CIV 13-2655-GPC-RBB,
 12 2014 WL 68580 (S.D. Cal. Jan. 8, 2014). To the extent that Hupp's
 13 request for discovery is made in connection with other litigation,
 14 the discovery request is improper. Accordingly, Hupp's Motion to
 15 Compel a further response to request number five is DENIED.

16 6. Document request 6

17 Plaintiff's final request to the County sought "[a]ny and all
 18 other documents that relate to this action, no matter how slight,
 19 that are not covered in any of the above requests." (Pl.'s Mot.
 20 Compel Mem. P. & A. Ex. 1e, ECF No. 154.) The Defendant objected
 21 that this request is invalid, vague, and overbroad. (Id. Ex. 4, at
 22 96.) In his Motion to Compel, Hupp restates his conclusory
 23 assertion that the County failed to respond to his "valid
 24 requests." (Pl.'s Mot. Compel Mem. P. & A. 12, ECF No. 154.)
 25 Assuming that the discovery sought is relevant, Plaintiff has not
 26 demonstrated that the County's objections are unwarranted. See
 27 Ellis, 2008 WL 860523, at *4. Further, this request is overbroad.
 28 See Audibert v. Lowe's Home Centers, Inc., 152 F. App'x 399, 401-02

1 (5th Cir. Nov. 1, 2005) (unpublished per curiam opinion) (finding
 2 that a district court did not abuse its discretion in denying a
 3 plaintiff's "extremely broad discovery requests" which asked for
 4 "'all things, all documents, all statements, all knowledge of
 5 facts, sworn or unsworn, relating to this case'") (quoting the
 6 plaintiff's discovery request). Plaintiff's Motion to Compel the
 7 County to produce documents in response to request number six is
 8 DENIED.

9 **B. Meet-and-Confer Requirement**

10 According to the Civil Local Rules for the Southern District
 11 of California, "The court will entertain no motion pursuant to
 12 Rules 26 through 37, Fed. R. Civ. P., unless counsel shall have
 13 previously met and conferred concerning all disputed issues." S.D.
 14 Cal. Civ. R. 26.1(a). "If counsel have offices in the same county,
 15 they are to meet in person. If counsel have offices in different
 16 counties, they are to confer by telephone." (Id.) The local rules
 17 further provide that "[u]nder no circumstances may the parties
 18 satisfy the meet-and-confer requirement by exchanging written
 19 correspondence." (Id.)

20 Rules requiring meet-and-confer efforts apply to pro se
 21 litigants. Madsen v. Risenhoover, No. C 09-5457 SBA (PR), 2012
 22 U.S. Dist. LEXIS 90810, at *8-9 (N.D. Cal. June 28, 2012) (finding
 23 that the meet-and-confer requirement applies to incarcerated
 24 individuals, but noting that the incarcerated plaintiff may send a
 25 letter to defendants); Walker v. Ryan, No. CV-10-1408-PHX-JWS
 26 (LOA), 2012 U.S. Dist. LEXIS 63606, at *5-6 (D. Ariz. May 7, 2012)
 27 (denying motion to compel where unrepresented party did not include
 28 a certification of attempts to meet and confer); see also Jourdan

1 v. Jabe, 951 F.2d 108, 109 (6th Cir. 1991) (discussing that
 2 although courts should liberally construe pro se plaintiffs'
 3 pleadings and legal arguments, this liberality does not apply to
 4 compliance with straightforward procedural requirements).

5 A court can deny a motion to compel solely because of a
 6 party's failure to meet and confer prior to filing the motion.

7 Scheinuck v. Sepulveda, No. C 09-0727 WHA (PR), 2010 U.S. Dist.
 8 LEXIS 136529, at *3-4 (N.D. Cal. Dec. 15, 2010); see Shaw v. Cnty.
 9 of San Diego, No. 06-CV-2680-IEG (POR), 2008 U.S. Dist. LEXIS
 10 80508, at *3-4 (S.D. Cal. Oct. 9, 2008) (denying plaintiff's motion
 11 to compel for failing to meet and confer). Nonetheless, a court
 12 can exercise its discretion to decide a motion on the merits
 13 despite a failure to meet and confer. See Marine Group, LLC v.
 14 Marine Trvelift, Inc., No. 10cv846-BTM (KSC), 2012 U.S. Dist. LEXIS
 15 49064, at *6-7 (S.D. Cal. Apr. 6, 2012) (explaining failure to meet
 16 and confer is grounds for denying a motion, but still addressing
 17 the merits).

18 Defendants argue in their opposition that Plaintiff did not
 19 satisfy the meet-and-confer requirements of the Federal Rule of
 20 Civil Procedure 37 prior to bringing his Motion to Compel. (Defs.'
 21 Opp'n 3, ECF No. 172.) In his motion, Plaintiff alleged that he
 22 sent meet-and-confer letters for each Defendant to Defendants'
 23 counsel by e-mail and hard copy, and also placed meet-and-confer
 24 phone calls to Defendants' counsel, but the counsel's telephone
 25 number listed on the pleadings was not a working number. (Pl.'s
 26 Mot. Compel Mem. P. & A. 4-5, ECF No. 154.) Plaintiff contends
 27 that he then sent further e-mail notifications to Defendants'
 28 counsel. (Id. at 5.) Hupp states that Defendants' "substitute

1 "counsel" called him later that day to meet and confer, and
 2 reiterated the same objections. (Id.) In his reply, Hupp points
 3 out that Defendants subsequently filed their Motion for Protective
 4 Order, submitting a declaration from their counsel, James Chapin,
 5 which states:

6 On August 26, 2013, I contacted Plaintiff Paul Hupp
 7 by telephone in order to meet and confer regarding the
 8 discovery he propounded to Defendants Romo, Myers and the
 9 County. After nearly 30 minutes of attempting to discuss
 10 discovery issues with Mr. Hupp, no progress was made on
 any discovery issue. Mr. Hupp appears unreasonable and
 uncompromising; the conversation demonstrated that a
 meaningful, productive meet and confer with Mr. Hupp is
 not possible.

11 (Defs.' Mot. Protective Order Attach. #2, Decl. James Chapin 2, ECF
 12 No. 160.)

13 This is not the first time the parties alleged difficulties
 14 satisfying the meet-and-confer requirement. See Hupp v. San Diego
Cnty., Civil No. 12cv0492 GPC (RBB), 2014 WL 1404510, at *16-17
 15 (S.D. Cal. Apr. 10, 2014). Unlike the previous time, however,
 16 Plaintiff and Defendants' counsel engaged in a telephonic
 17 conversation regarding the dispute, in addition to exchanging e-
 18 mail correspondence. Although it is unfortunate that their
 19 discussion did not resolve any of the discovery issues, the failure
 20 to come to an agreement does not establish that Plaintiff failed to
 21 meet and confer as required by the rules. The Court concludes that
 22 Hupp satisfied his meet-and-confer requirement.

24 **B. Defendants' Motion for Protective Order**

25 Defendants San Diego County, James Romo and Peter Myers filed
 26 a Motion for Protective order, asking the Court to stay discovery
 27 pending the resolution of Defendants' dispositive motions. (Mot.
 28 Protective Order Attach. #1 Mem. P. & A. 3, ECF No. 160.) They

1 represent that the following dispositive motions resolve all claims
2 in this action against them: Defendants San Diego District
3 Attorney's Office and James Romo's Motion for Summary Judgment or
4 Partial Summary Judgment [ECF No. 123], Defendant County of San
5 Diego's Motion for Judgment on the Pleadings [ECF No. 127], and
6 Defendants County of San Diego and Peter Myers' Motion for Summary
7 Judgment [ECF No. 161]. (Id.)

8 Judge Curiel has ruled on all the motions filed by these
9 Defendants. Defendants San Diego District Attorney's Office and
10 James Romo's Motion for Summary Judgment was granted on January 9,
11 2014 [ECF No. 221]. Defendants County of San Diego and Peter
12 Myers' Motion for Summary Judgment was granted on January 30, 2014
13 [ECF No. 228]. Defendant County of San Diego's Motion for Judgment
14 on the Pleadings was granted on March 4, 2014 [ECF No. 239].
15 Moreover, Defendants Romo and Myers have been dismissed from the
16 case. Accordingly, the Motion for Protective Order is DENIED as
17 moot.

IV. CONCLUSION

19 For the reasons stated above, Plaintiff's Motion to Compel
20 [ECF No. 154] is DENIED, and Defendants' Motion for Protective
21 Order [ECF No. 160] is DENIED as moot.

22 IT IS SO ORDERED.

23 || Dated: June 3, 2014

Ruben B. Brooks
Ruben B. Brooks
United States Magistrate Judge

25 cc: Judge Curiel
All Parties of Record